
DATE: June 17, 1992
CASE NO. 91-ERA-45
92-ERA-8

IN THE MATTER OF
SANG JOO KIM,
PLAINTIFF,

v.

THE TRUSTEES OF THE
UNIVERSITY OF PENNSYLVANIA,
RESPONDENT .

BEFORE: THE SECRETARY OF LABOR

FINAL ORDER APPROVING SETTLEMENT AGREEMENT
AND DISMISSING CASES

The captioned cases, which are before me for review, arise under the employes protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. 5851 (1988). On April 14, 1992, the parties executed a Settlement Agreement and General Release and submitted it to Administrative Law Judge Steven E. Halpern. On April 28, 1992, Complainant sent to the ALJ copies of letters dated April 17, 21, and 22, 1992, which indicated Complainant's rescission of the settlement agreement and discharge of Jules Epstein as counsel. On April 29, 1992, Epstein wrote the ALJ explaining the nature of the problem, indicated that notwithstanding the previous

correspondence the settlement agreement remained in place, and that David Kairys of the same firm represented Complainant.

On May 1, 1992, Complainant executed a "Reconfirmation of Settlement," in which he stated that, "I reconfirm the settlement in the above matter and hereby withdraw any and all earlier rescissions and renunciations of that settlement which I have made." Reconfirmation ¶ 2. The ALJ thereupon issued his recommended Decision and Order Approving Settlement.

On May 28, 1992, Complainant wrote to the Secretary requesting

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that any Order approving Settlement be withheld. Complainant alleged that, "since I signed the settlement agreement against my voluntary will, new information has been uncovered which changes the fundamental premise underlying the formula initially put in place for the negotiation." On June 1, and June 3, 1992, Complainant sent the Secretary particulars to support his May 28 request. On June 9, 1992, by Notice from the Director of the Office of Administrative Appeals, Complainant's letters of May 28 and June 1, and June 3, 1992, were served on the parties and placed in the administrative record.

The terms of the parties' agreement have been carefully reviewed. I note that the agreement encompasses the settlement of matters arising under various laws, only one of which is the ERA. *See, e.g.*, Settlement Agreement and General Release ¶ 6-7. For the reasons set forth in **Poulos v. Ambassador Fuel Oil Co**,. *Inc.*, Case No. 86-CAA-l, Sec. Order, November 2, 1987, slip op. at 2, I have limited my review of the agreement to determining whether its terms are a fair, adequate, and reasonable
settlement of Complainant's allegations that Respondent violated the ERA.

I also note that certain language in the agreement could be construed as a waiver by Complainant of causes of action he may have which arise in the future. See, e.g., Settlement Agreement and General Release ¶ 5. Because a waiver of Complainant~s rights based on future employer actions would be contrary to public policy, I interpret these provisions as limited to a waiver of the right to seek damages in the future based on claims or causes of action arising out of facts or any set of facts occurring before the date of the agreement. *See Polizzi v. Gibbs and Hill*, Case No. 87-ERA-38, Sec. Order Rejecting in Part and Approving in Part Settlement Submitted by the Parties and Dismissing Case, July l8, 1989, slip op. at 9, and cases cited therein.

As so construed, I f ind the terms of the agreement to be fair, adequate, and reasonable. Complainant's bare allegations that he was coerced into signlng the agreement, that he did not fully understand it, that he was not executing the agreement voluntarily and **with full knowledge of its contents, and that he** signed the agreement without reading it (Letter from Sang Joo Kim to Linda [sic] Martin, dated June 1, 1992) are not persuasive. The record shows that Complainant thoroughly reviewed a written draft of the settlement agreement and made substantial comments on it. Letter from Sang Joo Kim to Messrs Kairys and Epstein, dated March 30, 1992. Moreover, Complainant signed the final agreement, in which he warranted that he had read and fully

understood all of the provisions and effects of the

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Agreement. Settlement Agreement ¶ 11. He was represented at all times by counsel. The Secretary has previously considered whether one party may disavow a settlement before the Secretary has reviewed it, specifically addresslng a claim of lack of consent and attorney coercion. *Macktal v. Brown & Root*, Case No. 86-ERA-23, Sec. Order Rejecting in Part and Approving in Part Settlement Between the Parties and Dismissing Case, Nov. 14, 1989, Slip op. at 4-10. The Secretary's disposition on that issue was expressly upheld. *Macktal v. Secretary of Labor*, 923 F.2d 1150, l157 (5th Cir. 1991). The record here similarly contains no showing of coercion or other impropriety that would justify renunciation of the settlement agreement. *See Petty v. Timken Corp.*, 849 F.2d 130 (4th Cir. 1988); *Riley v. American Family Mutual Insurance Co.*, 881 F. 2d 368, 373-74 (7th Cir. 1989) .
Accordingly, these cases are DISMISSED WITH PREJUDICE. *See*, **Settlement Agreement and General Release ¶ 12; Complainant's** Reconfirmation of Settlement, dated May 1, 1992, ¶ 2.

SO ORDERED.

LYNN MARTIN
Secretary of Labor

Washington, D. C.